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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

ROCKET VENTURES II SBIC, L.P.,

Defendant.

Civil Case No.

COMPLAINT FOR RECEIVERSHIP
AND PERMANENT INJUNCTIVE
RELIEF

COMPLAINT FOR RECEIVERSHIP AND INJUNCTION

COMES NOW Plaintiff, the United States of America, on behalf of its agency, the
United States Small Business Administration, and for its cause of action states as follows:

COMPLAINT FOR RECEIVERSHIP AND PERMANENT INJUNCTIVE RELIEF

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NORTHERN DISTRICT OF CALIFORNIA

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1 (hereinafter “SBIC”). 15 U.S.C. § 687(c). SBA duly promulgated such regulations, which are
2 set forth at Title 13 of the Code of Federal Regulations, Part 107 (hereinafter the “Regulations”).

3 6. An SBIC is a corporation, a limited liability company, or a limited partnership
4 organized solely for the purpose of performing the functions and conducting the activities
5 contemplated under the Act. 15 U.S.C. § 681(a). Pursuant to the Act, SBA is authorized to
6 license SBICs (Id. at § 681(c)), which, although they are non-depository institutions, are
7 financial institutions that are similar to banks, savings and loans institutions and credit unions
8 because they provide funding directly to the public. SBICs provide venture capital to qualified
9 small independent businesses by supplementing the flow of private equity capital, long-term
10 funds (debt securities) and loans.
11

12 7. An SBIC has the authority to borrow money, issue securities, promissory notes, or
13 other obligations under such conditions and limitations as regulated by SBA. SBA is
14 authorized to provide Leverage to SBICs through the purchase, or guarantee of payment, of
15 debentures or participating securities issued by SBICs. 15 U.S.C. §§ 683(a) and (b). Such SBA
16 financing (defined as “Leverage” under the Regulations) is subject to the Regulations, including
17 but not limited to the provisions of 13 C.F.R. §§ 107.1820-1850 and § 107.507.
18

19 8. In consideration for being licensed to operate as an SBIC and/or receive federal
20 tax dollar leverage, SBICs agree to comply with the requirements of the Act and the Regulations.
21 Each Participating Securities instrument issued by an SBIC specifically incorporates the terms of
22 the Regulations. Thus, a violation of any regulation, including exceeding the maximum capital
23 impairment, is a violation of the terms of the Participating Securities and is a separate violation
24 of the Act and Regulations.
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1 9. SBA is charged with overseeing and regulating the SBIC program. If SBA
2 determines that an SBIC licensee has engaged, or is about to engage, in any act or practices
3 which constitute, or will constitute, a violation of the Act or Regulations, the SBA may seek,
4 from the appropriate United States District Court, an order enjoining such act or practices, and
5 upon a showing by the SBA that such licensee has engaged, or is about to engage, in any such
6 act or practices, a permanent or temporary injunction, restraining order, or other order, shall be
7 granted without bond. In addition, the Court is authorized to appoint SBA to act as receiver for
8 such licensee. 15 U.S.C. § 687c. Moreover, if an SBIC violates, or fails to comply with, any of
9 the provisions of the Act or Regulations, all of its rights, privileges, and franchises may be
10 forfeited and the company may be declared dissolved. 15 U.S.C. § 687(d).

11
12 10. One of the regulatory conditions that an SBIC is subject to is “Capital
13 Impairment” as that term is defined under the Regulations. Together, 13 C.F.R. 107.1830 and
14 107.1850 set forth the maximum amount of Capital Impairment that an SBIC licensee may have
15 during the forbearance period and thereafter, as applicable. A licensee that has a condition of
16 Capital Impairment is not in compliance with the terms of its Leverage. 13 C.F.R. §
17 107.1830(b).

18
19 11. Another regulatory condition affecting licensees such as Defendant is that upon
20 the occurrence of “Restricted Operations” as that term is defined under the Regulations, the
21 licensee consents to SBA’s right to require that all of the SBIC’s private capital commitments be
22 funded in accordance with the company’s Articles. 13 C.F.R. § 107.1820(f). The licensee’s
23 failure to act as requested by SBA results in the licensee’s consent to the appointment of SBA as
24 Receiver for the purpose of continuing the SBIC’s operations. 13 C.F.R. §§ 107.1820(d)(1) and
25 (3).

12. SBA licensed Defendant as an SBIC pursuant to 15 U.S.C. § 681(c) on or about June 6, 2001, under SBA License No. 0979-0435, solely to do business under the provision of the Act and the regulations promulgated thereunder.

13. Defendant's general partner is Rocket Ventures SBIC Partners, L.L.C., a limited liability company formed under the laws of the State of Delaware.

14. Defendant's management company is Rocket Management II, LLC, a limited liability company formed under the laws of the State of California.

15. Defendant's Limited Partnership Agreement acknowledges that Defendant was required at all times to be operated in accordance with the Act and Regulations.

16. Defendant applied for and received funding from the SBA through the purchase and/or guaranty of Participating Securities, a form of Leverage, as those terms are defined under the Regulations, in the total principal amount of \$31,225,000. To date, a total principal balance of \$27,725,000 remains outstanding as follows:

<u>Loan Number</u>	<u>Principal Balance</u>	<u>Date Disbursed</u>	<u>Rate</u>
02042452-02	1,775,000	07-25-2001	6.344
02042453-00	3,325,000	10-01-2001	6.030
02042454-09	1,000,000	01-09-2002	6.030
02042455-07	1,000,000	01-09-2002	6.030
02042456-05	1,000,000	01-31-2002	6.030
02042457-03	1,000,000	01-31-2002	6.030
02042458-01	1,000,000	01-31-2002	6.030
02042459-10	1,060,000	06-28-2002	5.199
02042460-02	1,060,000	08-07-2002	5.199
02042461-00	1,060,000	08-07-2002	5.199
02042462-09	1,060,000	08-07-2002	5.199
02042463-07	1,060,000	08-07-2002	5.199
02042464-05	1,005,000	04-01-2003	5.136

1	02042465-03	800,000	06-12-2003	5.136
2	02042466-01 &			
3	02043651-05	805,000	07-01-2003	5.136
4	02043652-03	805,000	07-11-2003	5.136
5	02043653-01	805,000	07-11-2003	5.136
6	02043654-10	700,000	02-13-2004	4.754
7	02043655-08	700,000	02-13-2004	4.754
8	02043656-06	700,000	03-08-2004	4.754
9	02043657-04	700,000	03-12-2004	4.754
10	02043658-02	700,000	03-12-2004	4.754
11	02043659-00	555,000	04-30-2004	4.754
12	02043660-03	550,000	04-30-2004	4.754
13	02043661-01	555,000	06-01-2004	4.754
14	02043662-10	555,000	06-01-2004	4.754
15	02043663-08	555,000	06-01-2004	4.754
16	02043664-06	140,000	11-12-2004	4.638
17	02043665-04	145,000	12-02-2004	4.638
18	02043666-02	140,000	12-09-2004	4.638
19	02043667-00	140,000	12-09-2004	4.638
20	02043668-09	140,000	12-09-2004	4.638
21	02043669-07	425,000	02-02-2005	4.638
22	02043670-10	100,000	02-04-2005	4.638
23	02043671-08	100,000	02-04-2005	4.638
24	02043672-06	75,000	02-04-2005	4.638
25	02043673-04	<u>430,000</u>	02-04-2005	4.638
26		\$27,725,000		

17. Section 107.1830(c) of the Regulations requires that Defendant not have a condition of Capital Impairment of greater than 60%, as that term is defined under the Regulations.

1 18. Based on Defendant's financial reports (SBA Form 468) for the quarter ending
2 September 30, 2004, the SBA determined that Defendant had a condition of Capital Impairment
3 in excess of the regulatory limit applicable to it, and by letter dated March 22, 2005, SBA
4 directed the company to cure the impairment within 15 days of the date on the letter.

5
6 19. From the information in the Form 468, Rocket's Capital Impairment was
7 determined to be above 90%, when, because Defendant was still in a forbearance period, the
8 maximum Capital Impairment it was permitted to have was 85%.

9 20. SBA's March 22, 2005 letter informed Defendant that failure to cure the
10 impairment would result in the company being placed in Restricted Operations. The letter stated
11 that if Defendant was placed in Restricted Operations, the SBA had the right to require the SBIC
12 to call all unfunded private capital. The letter further reminded Defendant that its maximum
13 impairment level would decrease to 60% once its forbearance period ended in July 2006.
14 Subsequently, by letter dated January 4, 2006, the SBA informed Defendant that it considered
15 the matter resolved as Defendant had corrected the condition of Capital Impairment as of March
16 31, 2005.

17
18 21. By the following year, Defendant was once again in a condition of Capital
19 Impairment. Based on Defendant's financial statements (SBA Form 468) for the period ending
20 December 31, 2005, SBA determined that Defendant had a condition of Capital Impairment of
21 94.65%, which was in excess of the applicable regulatory limit.

22
23 22. By letter dated April 13, 2006, SBA directed Defendant to cure its impairment
24 within fifteen days, otherwise Rocket would be placed in Restricted Operations pursuant to 13
25 C.F.R. § 107.1820(f). The letter advised Defendant that it needed to increase its Regulatory
26 Capital (which means private capital under the Regulations) by no less than \$2,626,817 in order
27
28

1 to reduce its Capital Impairment below the regulatory limit. The letter also advised Defendant of
2 the ramifications of being placed in Restricted Operations, including SBA's right (and
3 Defendant's consent to that right) to require that all remaining private capital commitments be
4 funded.

5
6 23. Defendant failed to cure its condition of Capital Impairment within the permitted
7 time and, consequently, by letter dated May 4, 2006, SBA informed Defendant that it had been
8 transferred to liquidation status effective April 28, 2006.

9 24. Since at least December 2005, Defendant has been in a condition of Capital
10 Impairment, which increased substantially over the next couple of years. When Defendant's
11 forbearance period ended in July 2006, its Capital Impairment was not permitted to exceed 60%.
12 Defendant's financial statements for the periods ending March 31, 2007, June 30, 2007 and
13 September 2007 indicate impairment levels of 100.27%, 104.18%, and 116.75%, respectively.
14 These levels are substantially in excess of the regulatory limits.

15
16 25. To date, Defendant has failed to cure its condition of Capital Impairment.

17 26. Pursuant to 13 C.F.R. § 107.1820(f), when Defendant was placed in Restricted
18 Operations SBA was vested with the right (and Defendant consented to SBA's exercise of such
19 right) to require that all of Defendant's private capital commitments be funded in accordance
20 with the company's Articles.

21 27. On or about May 4, 2006, SBA instructed Defendant to call all unfunded capital
22 commitments, and informed the company by letter dated May 17, 2006 that SBA would not
23 agree to the deferral, termination, reduction, release or amendment of any of the unfunded
24 commitments.

25 28. By letter dated May 25, 2006, Defendant made it clear that it was not going to
26 comply with SBA's instruction regarding the unfunded commitments. Defendant's letter stated,
27 "[f]inally, with capital already on hand to support the ongoing needs of our portfolio, there is no
28

1 need for the fund to call the remaining Private Capital or to seek to draw down further
2 commitments from the SBA.”

3 29. To date, Rocket has not called any of the unfunded private capital commitments.
4 Therefore, pursuant to 13 C.F.R. §§ 107.1820(d)(1) and (3), Rocket has consented to the
5 appointment of SBA as Receiver for the purpose of continuing Rocket’s operations.
6

7 **COUNT ONE**

8 **CAPITAL IMPAIRMENT**

9 30. Paragraphs 1 through 29 are incorporated herein by reference.

10 31. Defendant has failed to cure its condition of Capital Impairment, and the principal
11 balance of \$31,225,000 of Participating Securities purchased by the SBA remains outstanding.

12 32. Defendant’s failure to cure its condition of Capital Impairment is non-compliance
13 with the terms of its Leverage and a violation of §107.1830(b) of the Regulations.
14

15 33. Defendant’s failure to cure its condition of Capital Impairment is nonperformance
16 of the requirements of the Participating Securities as well as Defendant’s Application for SBIC
17 License and a violation of § 107.507(a) of the Regulations.

18 34. SBA has determined that Defendant is not in compliance with the terms of its
19 Leverage due to its uncured condition Capital Impairment and, therefore, the Licensee is in
20 violation of §§ 107.1830(b) and 507(a) of the Regulations.
21

22 35. As a consequence of Defendant’s violation of §§ 107.1830(b) and 507(a) of the
23 Regulations, the SBA is entitled to the injunctive relief provided under the Act, 15 U.S.C. §§
24 687(d) and 687c, including the appointment of the SBA as Receiver of Defendant.

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COUNT TWO

FAILURE TO REQUIRE FUNDING OF PRIVATE CAPITAL COMMITMENTS

36. Paragraphs 1 through 35 are incorporated herein by reference.

37. Upon Defendant's placement in Restricted Operations, the SBA had a right, pursuant to 13 C.F.R. § 107.1820(f), and did exercise that right to require that all private capital commitments be funded in accordance with Defendant's Articles.

38. To date, Defendant has failed to require that all private capital commitments be funded.

39. Pursuant to 13 C.F.R. § 107.1820(d)(1) and (3), Defendant's failure to act as requested by SBA resulted in Defendant's consent to the appointment of SBA as Receiver for the purpose of continuing Defendant's operations.

40. As a consequence of Defendant's consent to the appointment of SBA as Receiver for Defendant's operations, the SBA is entitled to the injunctive relief provided under the Act, 15 U.S.C. §§ 687(d) and 687c, including the appointment of the SBA as liquidating Receiver for Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays as follows:

A. That this Court grant injunctive relief, both preliminary and permanent in nature, restraining Defendant, its managers, general partners, directors, officers, agents, employees, and other persons acting in concert or participation therewith from: (1) making any disbursements of Defendant's funds; (2) using, investing, conveying, disposing, executing, or encumbering in any fashion, any funds or assets of Defendant, wherever located; and (3) further violating the Act or the Regulations promulgated thereunder.

1 B. That this Court determine and adjudicate Defendant's non-compliance with and
2 violation of the Act and the Regulations promulgated thereunder.

3 C. That this Court, pursuant to 15 U.S.C. § 687c, take exclusive jurisdiction of
4 Defendant and all of its assets, wherever located, appoint the SBA as receiver of Defendant for
5 the purpose of marshaling and liquidating the assets of Defendant and satisfying the claims of
6 creditors as determined by the Court, and such other relief as contained in the Order filed
7 simultaneously herewith.
8

9 D. That this Court grant such other relief as may be deemed just and equitable.

10 Respectfully submitted,

11
12 JOSEPH P. RUSSONIELLO
13 United States Attorney

14 Dated: April, 30, 2008

By /s/ Edwin L. Joe
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